

STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY

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|-----------------------|---|---------------------------|
| IN RE: |) | |
| |) | |
| WALGREENS #04212 |) | Complaint No. 2015-006633 |
| Permit No. 006322 |) | |
| 2501 E. Linwood Blvd. |) | |
| Kansas City, MO 64128 |) | |

**SETTLEMENT AGREEMENT BETWEEN MISSOURI
BOARD OF PHARMACY AND WALGREENS #04212**

Come now Walgreens #04212 ("Respondent" or the "Pharmacy") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Respondent knowingly and

voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Respondent acknowledges that it has received a copy of the draft Complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 006322, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Walgreens #04212 ("Respondent" or the "Pharmacy") is licensed as a pharmacy under the laws of the State of Missouri, Permit No. 006322. Respondent's permit was at all times relevant herein current and active.

August 2014 Investigation

3. On or around August 11, 2014, the Board office received a Drug Enforcement Administration ("DEA") Report of Loss of Controlled Substances dated August 7, 2014, indicating that Respondent incurred the following losses due to employee pilferage:

¹ All statutory references are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise stated.

| Drug ² | Amount lost |
|---------------------------------|-------------|
| Alprazolam 2mg | 3496 |
| Promethazine with Codeine Syrup | 3000ml |
| Promethazine with Codeine Syrup | 10ml |
| Promethazine with Codeine Syrup | 13973ml |

4. On or about December 16, 2014, the Board received an amended Report of Loss of Controlled Substances Respondent filed with the Missouri Bureau of Narcotics and Dangerous Drugs ("BNDD") showing the same losses as indicated in the DEA form.

5. Board Inspector Frank Van Fleet investigated the losses.

6. On or about July 30, 2014, Respondent's Loss Prevention Manager conducted a routine store visit where his review of internal reports showed excessive negative adjustments of Alprazolam 2mg and Promethazine with Codeine starting in February 2014.

7. Pharmacy technician T.B. was hired on or about February 10, 2014.

8. On August 1, 2014, Alprazolam 2mg was counted by pharmacy staff and was short three (3) bottles of 100 tablets. T.B. was working that day.

9. Counts taken of those drugs on August 2, and August 3, 2014 were accurate. T.B. was not working on those dates.

10. Security footage showed T.B. take Alprazolam 2mg off the fast-rack shelf on three (3) occasions prior to August 1, 2014, take the product information off the lid of the bottle, take the bottle to the back of the Pharmacy and then return to the counter without the bottle.

11. On August 4, 2014, Respondent contacted the Kansas City Police Department who performed a search of T.B.

² Alprazolam is a Schedule IV controlled substance. §195.017.8(2)(a), RSMo; promethazine with codeine syrup is a Schedule IV controlled substance. §195.017.8(2)(a), RSMo. Promethazine with codeine is a Schedule V controlled substance pursuant to § 195.017.10(1)(b), RSMo

12. The search revealed liquid marijuana, a pipe and a vial of urine in T.B.'s purse. She also was suspected of concealing drugs in padded underwear she was wearing.

13. On October 14, 2014, Respondent notified Board Inspector Fran Van Fleet, who was investigating the losses on behalf of the Board, that T.B. had been terminated from employment on or about August 4, 2014.

December 2014 Investigation

14. On December 1, 2014, Respondent's Loss Prevention Manager informed Inspector Van Fleet that Respondent also was investigating pharmacy technician L.C.

15. On December 19, 2014, the Board office received DEA and BNDD Reports of Loss of Controlled Substances dated December 16 and December 18, 2014, respectively, indicating that Respondent incurred the following losses due to employee pilferage:

| Drug³ | Amount lost |
|----------------------------------|--------------------|
| Hydrocodone/Acetaminophen 10/325 | 1134 |
| Hydrocodone/Acetaminophen 5/325 | 1328 |

16. Respondent began investigating losses on October 28, 2014 when the store manager received an anonymous telephone call from a female patient who claimed to have first-hand knowledge that a pharmacy technician was stealing hydrocodone and selling it on the street for cash. The caller physically described L.C. and the car she drove.

17. Respondent's Loss Prevention Manager reviewed 52-week inventory reports, which showed shortages in Hydrocodone/Acetaminophen 10/325 and 5/325, and instituted daily counts of both drugs.

18. Prior to daily counts being implemented, the staff pharmacists trusted the quantity of medication circled on the prescription labels by pharmacy technicians.

³ Hydrocodone was rescheduled from a Schedule III to a Schedule II controlled substance on October 6, 2014. 21 §§ C.F.R. 1308.12-.13.

19. Senior pharmacy technician R.M. reported that she was told that L.C. was overfilling hydrocodone prescriptions and passing the prescription to the patient through the drive through window and collecting cash outside of the store.
20. R.M. also reported that once the daily counts had been implemented, L.C. refused to fill medications and that there were several patients of the Pharmacy who only came to L.C. for medications and refused assistance from all other Pharmacy staff.
21. Pharmacy technician S.W. reported that L.C. came to the Pharmacy when she was not scheduled to work or stayed late to work on deleting from the Pharmacy's computer system filled prescriptions which were greater than 10 days old and not picked up by the patient.
22. S.W. also reported that L.C. often left for long breaks outside the store without authorization.
23. Pharmacist-In-Charge A.M. ("PIC A.M.") reported that on December 7, 2014, two patients came to the Pharmacy to pick up their prescriptions that were filled earlier that day, but the prescriptions could not be located in the pick-up bins. L.C. had worked on "deletes" before the patients arrived.
24. PIC A.M. discovered that L.C. had deleted both prescriptions from the computer system and she was unable to provide an explanation for these deletions.
25. L.C. often went to the back of the Pharmacy out of camera view to sort through the deletes.
26. L.C.'s employment with Respondent was terminated on December 10, 2014 for excessive tardiness.

Letter of Warning

27. On June 19, 2015, the Board issued an Administrative Letter of Warning to Respondent for: (1) failing to provide adequate security to deter diversion and theft by pharmacy technician T.B. who diverted a significant volume of alprazolam and promethazine with codeine without being promptly detected; and (2) failing to notify the Board within 15 days of pharmacy technician T.B.'s termination of employment with Respondent.

28. To ensure compliance, the Board requested an official response from Respondent to the Letter of Warning that: (1) verified that it had reviewed each of the laws and/or regulations cited by the Board in the Letter of the Warning in their entirety; and (2) outlined the procedures Respondent had taken to prevent future diversion/losses and ensured timely reporting of technician action in the future.

29. The Board received a response from Respondent to the Letter of Warning on July 17, 2015 addressing the Board's concerns.

December 2015 Investigation

30. On November 9, 2015, the Board office received a BNDD Report of Loss of Controlled Substances of even date showing that Respondent incurred the following losses due to theft by pharmacy technician R.M.:

| Drug ⁴ | Amount lost |
|------------------------|-------------|
| Oxycodone/APAP 10/325 | 2895 |
| Oxycodone/APAP 7.5/325 | 1137 |
| Oxycodone/APAP 5/325 | 1171 |
| Oxycodone IR 5mg | 940 |
| Oxycodone IR 10mg | 583 |
| Oxycodone IR 15mg | 629 |
| Oxycodone IR 20mg | 216 |
| Oxycodone IR 30mg | 496 |

⁴ Oxycodone is a Schedule II controlled substance. §195.017.8(2)(uu), RSMo

31. Respondent began investigating losses of oxycodone on or about September 11, 2015, following its discovery of multiple negative adjustments of the drug over the previous six (6) weeks.

32. On October 29, 2015, R.M. was interviewed and admitted to the diversion of multiple strengths of oxycodone almost every day from July to October, 2015, totaling thousands of tablets.

33. She admitted that when filling prescriptions for oxycodone, she kept the stock bottle in front of her rather than immediately returning it to the pharmacist and then she carried the bottle with other non-controlled substance bottles to the back area of the Pharmacy, out of the view of the camera, and then removed oxycodone tablets and put them in her pockets. She then put the oxycodone bottle back on the counter.

34. Later in the day, she stated that she “would pop about 10 [tablets] in my mouth and take a drink.”

35. R.M.’s employment with Respondent was terminated on October 29, 2015.

36. Notification of R.M.’s termination of employment with Respondent was submitted to the Board on January 5, 2016.

Violations

37. 20 CSR § 2220.2-010(1)(H) provides:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy’s hours of operation are different from the remainder of the facility.

38. Respondent did not provide adequate security for its controlled substances to guard against theft and diversion in that pharmacy technicians T.B., L.C. and R.M. were able to

remove significant quantities of controlled substances from the Pharmacy for many months without being readily detected.

39. Respondent knew or should have known it was losing significant quantities of controlled substances, but was unable to prevent those losses for many months prior to identifying pharmacy technicians T.B., L.C. and R.M. as the or a source.

40. By failing to maintain adequate security over its inventory of controlled substances and by allowing pharmacy technicians T.B., L.C. and R.M. to remove substantial quantities of controlled substances from the Pharmacy, Respondent violated 20 CSR § 2220-2.010(1)(H).

41. Missouri statute also requires:

Any hospital or licensed pharmacy shall report to the board any final disciplinary action taken against a pharmacy technician or the voluntary resignation of a pharmacy technician against whom any complaints or reports have been made which might have led to final disciplinary action that can be a cause of action for discipline by the board as provided for in subsection 2 of section 338.055. § 338.013.10, RSMo.

42. 20 CSR § 2220-2.010(1)(P) requires:

(P) When required by section 338.013(10), RSMo, to report technician disciplinary action, the pharmacy must notify the board in writing within fifteen (15) days of the action. The notification must include:

1. The name and permit number of pharmacy;
2. Name of person making the notification;
3. Name of technician;
4. Technician registration number;
5. Date of action; and
6. Reason for action.

43. Respondent's failure to notify the Board in writing within 15 days of the termination of T.B and R.M's employment with Respondent violates § 338.013.10, RSMo and 20 CSR § 2220-2.010(1)(P).

JOINT CONCLUSIONS OF LAW

44. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit pursuant to 20 CSR § 2220-2.010(1)(H) and (O), which states:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

* * *

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

45. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit pursuant to § 338.210.5, RSMo, which states:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

46. Respondent's conduct is cause for disciplinary action against its permit to operate a pharmacy under §338.055.2(6) and (15), RSMo, which provides:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo (2000):

A. Respondent's permit numbered 2011017243 shall be placed on **PROBATION** for a period of **THREE (3) YEARS**. The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

The following terms apply for the entire disciplinary period.

1. Respondent shall pay all required fees for licensing to the Board and shall renew its pharmacy license prior to October 31 of each licensing year.
2. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.
3. If requested, Respondent shall provide the Board a list of all licensed pharmacists employed by the Respondent, and the individuals' current home addresses and telephone numbers.
4. If, after disciplinary sanctions have been imposed, Respondent fails to keep its pharmacy license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.
5. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months (due by each January 1 and July 1), beginning with whichever date occurs first after this Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of its disciplinary order.
6. Respondent shall not serve as an intern training facility for interns.

7. Respondent shall perform audits/reconciliations on all controlled substances throughout the period of probation. Within fifteen (15) days of the beginning of probation, Respondent shall conduct a physical inventory of said drugs. The physical inventory must be an exact count with no estimation. Respondent shall then on a six (6) month cycle conduct a physical inventory and audit/reconciliation of said drugs for the previous six (6) month period. Respondent shall report the results of each audit/reconciliation to the Board office within thirty (30) days of the audit/reconciliation date. The person conducting the audits/reconciliations shall not be affiliated with the pharmacy (work at or supervise the pharmacy).
8. Respondent shall make a representative of the pharmacy available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.
9. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.
10. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

B. Upon the expiration of said discipline, Respondent's permit as a pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Respondent.

C. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

D. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the

Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

E. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

F. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

____ REQUESTS
RS DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE AS A PHARMACY.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's permit and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's permit. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's permit, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Board's Executive Director.

RESPONDENT

WALGREENS PHARMACY #04212

By:



As authorized representative for
Walgreens Pharmacy #04212

Printed:

Paula Smith, VP Pharmacy Ops

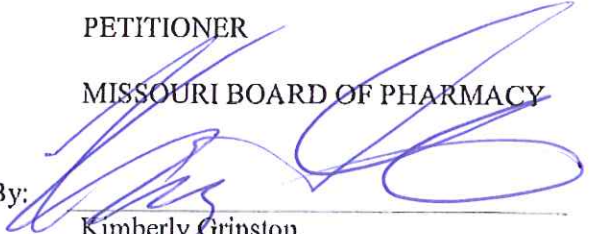
Date:

8/3/2017

PETITIONER

MISSOURI BOARD OF PHARMACY

By:

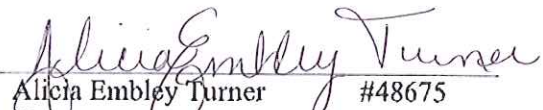

Kimberly Grinston
Executive Director

Date:

8/7/17

NEWMAN, COMLEY & RUTH P.C.

By:



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